

AG Jennings Announces Antitrust Suit Against Facebook

Citing a pattern of predatory acquisitions, a “buy or bury” strategy deployed against third-party developers, and the erosion of users’ privacy protections, Attorney General Kathy Jennings announced Wednesday that Delaware and other states are suing Facebook. [The suit](#) charges Facebook Inc. with violating the Sherman Antitrust Act and the Clayton Antitrust Act and seeks to end the social media giant’s illegal monopoly.

“Whether it’s railroads, telecom, or social media, monopolies undermine our economy’s foundation of consumer choice,” said Attorney General Jennings. “Facebook knowingly, openly, and illegally made digital hostages of its users and developers over a decade of unfair acquisitions and mistreatment of developers. We are suing not just to hold this company accountable for its conduct, but to release consumers from a monopoly and to allow Delawareans the choice and freedom they deserve.”

The lawsuit asserts that Facebook’s predatory and anticompetitive actions illegally acquired established competitors, cut services to smaller threats, deprived users from the benefits of competition, and reduced privacy protections and services along the way – all in pursuit of billions of dollars in advertising revenue.

AG Jennings’ suit asserts that consumers have been harmed over the last decade by what CEO Mark Zuckerberg has described as an effort to “build a competitive moat.” This “moat” was principally comprised of two strategies: acquisition of potential rivals that might eventually threaten the company’s

dominance, and working to destroy third-party developers that Facebook invited to utilize its platform.

Facebook uses data-gathering tools to monitor apps and to identify acquisition targets that pose the greatest threats to the tech giant's dominance. The company offer the heads of these competitors huge sums of money – often extravagantly exceeding prior valuations – in hopes of squashing any future competition for the Silicon Valley behemoth.

Facebook's anticompetitive strategy was showcased most obviously in its two highest-profile acquisitions: Instagram and WhatsApp.

Facebook viewed Instagram as a threat shortly after the app took off in the early 2010s. After an attempt to develop a competing version failed to gain traction, Zuckerberg admitted that a better strategy would be “paying a lot of money” for Instagram in an effort to “neutralize a potential competitor.” At the time, Instagram had zero revenue but valued itself at \$500 million, a sum that Zuckerberg called “crazy.” Despite that, Facebook acquired Instagram for \$1 billion in April 2012.

Similarly, Facebook viewed WhatsApp as a unique threat to its growth. With over 400 million active users worldwide in 2014, WhatsApp was the leader among emerging mobile messaging services. Facebook considered WhatsApp and similar products “the biggest competitive threat we face as a business.” In 2014 – just two years after another competitor offered the app \$100 million – Facebook acquired WhatsApp for roughly \$19 billion.

Wednesday's complaint further describes an aggressive “buy or bury” strategy against Facebook competitors who refuse to be bought out.

Facebook opened its platform to apps created by third-party and drove traffic to third-party sites by providing an easy

sign-in mechanism on external sites and apps. This in turn allowed Facebook to capture valuable data about its users' off-Facebook activity, enhance its ability to target advertising, and expand the site's functionality. In 2011, Facebook began to rescind access to apps that the company viewed as competition.

The abrupt termination of Facebook access can devastate an app: some companies experienced an almost overnight drop-off in user engagement and downloads. Removing Facebook access deprives an app of a major online market and triggers a sudden loss of functionality that can create broken or buggy features and suggest to users that the app is unstable. Facebook's actions against perceived threats to its growth and profit serve as a territorial warning to developers and also deter venture capitalists from investing in companies that Facebook might in the future see as competitors.

The elimination of competition large and small, and a sprawling business model that includes social networking, advertising, messaging, payments, and third party log-ins, exacerbates a dilemma for Facebook users: nobody wishing to leave the site has a simple way to transfer information or functionality to other services. Regardless of consumer preferences or Facebook's actions, users are effectively forced to stay put or to start their online lives from scratch.

This monopoly gives Facebook even broader discretion over how content is curated on the platform, how its users' private information is collected – indeed, many privacy protections have been eroded or eliminated in order to expand the tech giant's dominion over user data – and how to use that information to further.

In a separate action, the Federal Trade Commission also today filed a complaint against Facebook.

The multistate coalition asks the Court to halt Facebook's illegal, anticompetitive conduct and block the company from continuing this behavior in the future. Additionally, the coalition asks the Court to restrain Facebook from making further acquisitions valued at or in excess of \$10 million without advance notice to plaintiff states. Finally, the Court is asked to provide any additional relief it determines is appropriate, including the divestiture or restructuring of illegally acquired companies and current Facebook assets.

This matter is being handled for Attorney General Jennings' Consumer Protection Unit by Deputy Attorney General Michael Undorf and Paralegal Zuri Ramsey.